

ner be, and it hereby is, adopted as the decision of the Commission. *It is further ordered,* That respondents Pati-Port, Inc., and Abraham B. Wolf, also known as Al B. Wolf, shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist contained in the initial decision.

IN THE MATTER OF
SIMPSON TIMBER COMPANY ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 7 OF
THE CLAYTON ACT

Docket 7713. Complaint, Jan. 4, 1960—Decision, Jan. 4, 1962

Consent order requiring a substantial producer of redwood lumber and its wholly-owned subsidiary, both of Seattle, Wash.—which in 1955 occupied fourth position among major sellers of redwood and in 1956 acquired companies rating sixth and fifteenth, respectively, as well as another company's extensive redwood timber and timberlands, combined 1955 sales for which merging companies exceeded sales of the industry leader—to divest themselves of ownership of 500 million board feet of redwood lumber within a 13-year period, as in the order below in detail set out.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof and hereinafter more particularly designated and described, have violated and are now violating the provisions of Section 7 of the Clayton Act (U.S.C. Title 15, Sec. 18) as amended and approved December 29, 1950, hereby issues its complaint, pursuant to Section 11 of the aforesaid Act (U.S.C. Title 15, Sec. 21) charging as follows:

PARAGRAPH 1. Respondent Simpson Timber Company, herein referred to as Simpson, is a corporation organized and existing under

the laws of the State of Washington since 1896, with its principal place of business located at 1010 White Building, Seattle, Wash. During the course of years the title of the corporation has been Simpson Logging Company, but it has operated under various trade names, and has operated various divisions under different trade names. On April 10, 1956, the official title of said corporate respondent was changed to Simpson Timber Company. Simpson Redwood Company is a wholly-owned subsidiary of Simpson Timber Company, with its principal place of business located at the same address.

Simpson owns substantial tracts of redwood and other timberlands and is engaged in conducting logging operations and producing green lumber, finished lumber, green veneer, plywood, plywood products, panel and flush doors, insulating board, book and fine paper, and converted paper products out of Douglas fir, redwood and hemlock timber from plants and facilities located in the States of Washington and California. As of December 31, 1955, assets of this respondent corporation were listed at \$50,678,000, of which \$8,425,000 constituted standing timber, and income from products sold amounted to \$52,968,000.

Simpson is engaged in the distribution and sale of its products, including redwood, in commerce, as "commerce" is defined in the Clayton Act. It sells and distributes its products throughout the United States and for export through wholesalers and distributors.

In 1947 Simpson began limited logging operations on a redwood tract previously acquired in Northern California. In 1951, Simpson effected a major acquisition, *i.e.*, the cash purchase of all assets of Everett Pulp and Paper Company, the operation of which company was continued as a division of Simpson. By this time Simpson's operations in the Northern California redwood area had become well established, with logging operations, a sawmill at Klamath, Calif., and a finishing plant at Arcata, Calif.

A wholly owned subsidiary, Simpson Industries, Inc., was organized in 1954 for the purpose of acquiring the capital stock and assets of Shafer Bros. Logging Company near Shelton, Washington. The assets included a sawmill, timberlands, logging equipment, a railroad and a forest service contract adjacent to the Shelton Working Circle. On November 11, 1954, Simpson Logging Company, Ltd., was incorporated under the laws of British Columbia, Canada, as an operating subsidiary for the sale of insulating board products. Thereafter, on August 12, 1955, Simpson Logging Company of Michigan was incorporated under the laws of the State of Michigan as a wholly owned subsidiary for the purpose of operating an accoustical tile plant in

Michigan. On December 13, 1955, the Simpson Lumber Company was incorporated under the laws of the State of Washington; and on April 10, 1956, the name of this corporation was changed to Simpson Redwood Company, which company became the facility through which the acquisition involved herein was accomplished.

On or about February 21, 1956, Simpson, through its wholly owned subsidiary, respondent Simpson Redwood Company, acquired a controlling stock interest in Northern Redwood Lumber Company, and on March 26, 1956, Simpson purchased all the assets of Northern and assumed all its outstanding liabilities. This acquisition included Northern's subsidiary, The Arcata and Mad River Railroad Company of Korbel, Calif., as well as substantial timber holdings of redwood and Douglas fir in Northern California, a remanufacturing plant, a sawmill, and a service railroad. The property has been estimated to contain 345,000,000 board feet net merchantable recoverable redwood and 205,000,000 board feet net merchantable recoverable Douglas fir. The purchasing price was approximately \$11,000,000. These properties were integrated into the operations of Simpson.

On or about May 21, 1956, Simpson Redwood acquired a controlling stock interest in Sage Land and Lumber Company, Inc., a New York corporation. This company, the properties of which consisted entirely of timber and timberlands including redwood timber, has been liquidated into Simpson Redwood. No production facilities were involved in the acquisition, however the market value of the Sage timber was appraised at approximately \$8,000,000. The land was estimated to contain 285,000,000 board feet net merchantable recoverable redwood and 106,000,000 board feet net merchantable recoverable Douglas fir.

PAR. 2. M&M Woodworking Company, hereinafter referred to as M&M, was an Oregon corporation organized in June 1918. It was a fully integrated forest product company engaged in logging and production of lumber and forest products. M&M was engaged in the production for sale of fir, redwood, and hardwood plywood and veneers, flush doors, wood pipe and tanks; rough green and finished redwood and fir lumber and other related products. Plants and facilities of various types were located in the Willamette Valley of Oregon from Portland to Eugene, and in the Eureka, Calif., area. Timber holdings consisting primarily of Douglas fir were located in West Central Oregon; and holdings consisting primarily of redwood and Douglas fir were in the redwood belt of Del Norte and Humboldt Counties in Northern California. Total assets in 1955 were listed at \$45,964,000, of which \$18,160,000 constituted timber, timberlands, and related facilities. In 1956 net merchantable recoverable redwood

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from timberlands of M&M were estimated at 1,537,000,000 board feet. Total sales for the fiscal year amounted to \$42,708,000. Plants, locations, and commodities produced by M&M were as follows:

<i>Plant designation</i>	<i>Location</i>	<i>Products</i>
M&M Woodworking Co.....	Portland, Oreg.....	Fir and hardwood plywood.
Lyons Plant.....	Lyons, Oreg.....	Fir plywood.
Albany Plylock.....	Albany, Oreg.....	Fir plywood.
Idanha Veneer.....	Near Salem, Oreg..	Fir veneer.
National Pipe & Tank.....	Portland, Oreg.....	Wood pipe and tanks.
Eureka Plywood Plant.....	Eureka, Calif.....	Fir and redwood plywood.
Eureka Redwood Lumber Co. (wholly owned subsidiary of M&M).		
Eureka Redwood Lumber....	Eureka, Calif.....	Rough green and finished redwood and fir lumber.
Eureka Redwood Lumber.... Company (No. 2)	Redwood Creek,.... Calif.	Rough green redwood and fir lumber.
Springfield Lumber Mills Inc. (50 percent owned by M&M)		
Springfield Mills "A".....	Springfield, Oreg..	Finished green lumber.
Springfield Mills "B".....	Springfield, Oreg..	Finished green lumber.

M&M was engaged in the production and sale of the above-named products, among others, and in particular redwood lumber and products manufactured therefrom, in commerce, as "commerce" is defined in the Clayton Act. M&M sold and distributed its products in commerce throughout the United States through wholesalers and distributors.

PAR. 3. On August 17, 1956, respondent Simpson Timber Company, through its wholly-owned subsidiary, Simpson Redwood Company, acquired the M&M common stock and assets. The purchase price was in excess of \$50,000,000.

PAR. 4. (a) With the exception of a small quantity of redwood in the State of Oregon, Northern California contains the entire world's supply of redwood timber. Natural phenomena, such as the long growth period, limit the supply of merchantable redwood timber. Redwood timber is being logged at a rate considerably greater than the growth rate. The number of producers has declined substantially since 1947 and some of the principal producers have increased their redwood timber holdings. Both Simpson and M&M were and are substantial "producers" of redwood lumber, *i.e.*, operators of sawmills which saw redwood logs into rough green timber and board from timberland owned or upon which they have cutting rights.

(b) For the year 1955, prior to the merger of Simpson Timber Co. (including Sage), M&M and Northern Redwood, sales of redwood

lumber by these companies, respectively, totaled approximately 45.9 MM bd. feet, 44.3 MM bd. feet and 21.0 MM bd. feet. Said sales established each of the herein-named companies in fourth, sixth and fifteenth position, respectively, among the major sellers of redwood lumber and products for the year 1955. Combined sales of the merged companies for the year 1955 exceeded that of the industry sales leader, Hammond Lumber Co., which had sales of 91.2 MM bd. feet.

(c) Approximately 50 percent of redwood sales are made outside the State of California to various designated regions throughout the United States. During 1955, the combined sales of the merged companies represented approximately 18.3 percent of that market. Hammond Lumber Co., the merged companies' principal competitor and a leading producer in the redwood industry, held a market share in 1955 of approximately 18.1 percent. In addition, combined market shares of the merged companies within the State of California were substantial.

(d) For the year 1955, the respective production shares of the merged companies were: Simpson (including Sage) approximately 4.3 percent; Northern Redwood approximately 2.1 percent; and M&M approximately 4.6 percent. This combined total of 11 percent of redwood production placed respondent in a leadership position with the then principal producer, Hammond Lumber Co.

PAR. 5. The effect of the aforesaid acquisition of M&M Woodworking Company by Simpson, through its subsidiary Simpson Redwood Company, may be substantially to lessen competition or tend toward a monopoly in the redwood lumber industry within the United States. More specifically, the aforesaid effects include the actual or potential lessening of competition or a tendency to create a monopoly in violation of Section 7 of the Clayton Act, as amended, in the following ways, among others:

1. Respondents' competitive position in the production and sale of redwood lumber and its by-products has been enhanced to the detriment of actual and potential competition in the industry.

2. Actual and potential competition between respondents and M&M Woodworking Company has been and will be eliminated in the production and sale of redwood lumber and its by-products.

3. Industry-wide concentration of the production and sale of redwood lumber has been and may be increased.

4. Respondents' competitive position in the sale of redwood lumber and its by-products in the continental United States outside the State of California, such as in the Eastern States, has been enhanced to the detriment of actual and potential competition, and M&M

Woodworking Company has been eliminated as a substantial independent competitor.

5. This acquisition has and may have the effect of substantially increasing the concentration of ownership and control of the limited supply of standing redwood timber in the United States.

PAR. 6. The foregoing acquisition, acts and practices of respondent as hereinbefore alleged and set forth constitute a violation of Section 7 of the Clayton Act (U.S.C. Title 15, Sec. 18) as amended and approved December 29, 1950.

Mr. J. Wallace Adair and Mr. Eugene Kaplan for the Commission. Howery, Simon, Baker & Murchison, by Mr. Edward F. Howery and Mr. Harold F. Baker, of Washington, D.C.; Evans, McLaren, Lane, Powell & Beeks, by Mr. George V. Powell, of Seattle, Wash.; and Pillsbury, Madison & Sutro, by Mr. Francis R. Kirkham and Mr. George A. Sears, of San Francisco, Calif., for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

The complaint issued by the Commission on January 4, 1960, charges the respondents with violation of Section 7 of the Clayton Act, as amended, in connection with the acquisition of the M&M Woodworking Company.

Following a pre-hearing conference, hearings were held at Eureka, California, San Francisco, California, New York, N.Y., and Washington, D.C., after which counsel in support of the complaint rested their case in chief.

Thereafter, on September 19, 1961, there was submitted to the hearing examiner an agreement by and between respondents, by their duly authorized officers and their attorneys, and by counsel supporting the complaint providing for entry of a consent order to cease and desist and to divest. In accordance therewith, the parties agree that:

Respondents admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

The agreement disposes of all of this proceeding as to all parties. The parties agree that the order contained therein is in the public interest for the reasons set forth in Appendix A which is attached to and made a part of the agreement.

Respondents waive:

(a) Any further procedural steps before the hearing examiner and the Commission;

- (b) The making of findings of fact or conclusions of law; and
- (c) All of the rights they may have to challenge or contest the validity of the order entered in accordance with this agreement.

The record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement.

The agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

The agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

The order agreed upon may be entered in this proceeding by the Commission without further notice to respondents. When so entered it shall have the same force and effect as if entered after a full hearing. It may be altered, modified or set aside in the manner provided for other orders. The complaint may be used in construing the terms of the order.

The hearing examiner finds that the content of the agreement meets all of the requirements of Section 3.25(b) of the Rules of the Commission.

The hearing examiner having considered the agreement and proposed order, and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued.

1. Respondent Simpson Timber Company is a corporation existing and doing business under and by virtue of the laws of the State of Washington, with its office and principal place of business located at 2000 Washington Building, Seattle, Wash. (its former address was 1010 White Building, Seattle, Wash., as designated in the complaint).

Respondent Simpson Redwood Company is a wholly owned subsidiary of Simpson Timber Company, and is a corporation existing and doing business under and by virtue of the laws of the State of Washington, with its office and principal place of business located at 2000 Washington Building, Seattle, Wash. (its former address was 1010 White Building, Seattle, Wash., as designated in the complaint).

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents.

Initial Decision

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ORDER

I

1. *It is ordered*, That respondents, Simpson Timber Company and Simpson Redwood Company, corporations, their subsidiaries, officers, directors, agents, representatives, and employees shall sell and divest themselves absolutely and in good faith within 13 years from January 1, 1961, of ownership of an amount of redwood timber and/or redwood logs equal to 500,000,000 board feet, not less than 90% of which shall be old growth and 10% of which may be second growth, in accordance with the following provisions of this order.

2. In disposing of the total amount required to be divested by this order, respondents, during each twelve-month period beginning January 1, 1961, shall sell and divest to purchasers, as purchasers are hereinafter defined, not less than 35,000,000 board feet of redwood timber and/or redwood logs. In the event respondents shall sell more than 55,000,000 board feet of redwood cutting rights and/or redwood logs in any one year, the amount by which such sales exceed 55,000,000 board feet shall not be credited against the total amount to be divested pursuant to this order. Respondents may average sales of redwood timber and/or logs over any three consecutive calendar years in complying with this order; provided however, that any three consecutive years may exclude any year or years in which respondents are unable to sell 35,000,000 board feet at prices equal to or above the minimum prices specified in paragraph 5 of this section of this order. Sales to others than purchasers shall not be credited against the total amount to be divested.

3. The redwood timber and/or logs to be divested by respondents pursuant to this order may be any redwood timber and/or logs owned by respondents, whether or not acquired as a result of respondents' acquisition of M&M Woodworking Company.

4. In the event respondents shall sell redwood-type timberlands to purchasers during the period of this order, the board feet of redwood timber so sold may be credited against the total board feet required to be divested by this order or may be apportioned equally over the period ending December 31, 1973, in determining the minimum amount which respondents are required to sell and the maximum amount permitted to be credited in each calendar year. In the event respondents shall enter into cutting contracts for the sale of timber or into long term contracts for the sale of logs with purchasers during the period of this order, the board feet of redwood timber and/or logs so sold or contracted to be sold may be apportioned equally over the term of

such contracts or over the period ending December 31, 1973 in determining the minimum amount which respondents are required to sell and the maximum amount permitted to be credited in each calendar year. In the event respondents elect to apportion sales of redwood timber and/or logs under this paragraph 4 of this section of this order, all such amounts apportioned shall be credited against the total amount to be divested pursuant to this order, except to the extent that such apportionment results in a total amount for any calendar year which is greater than 55,000,000 board feet.

5. Respondents shall not be required during the 13-year period beginning January 1, 1961, to sell and divest redwood timber and/or logs at prices which are less than \$20.00 per thousand board feet for stumpage, plus 8% per annum compounded from January 1, 1961, to cover actual carrying costs. In the event respondents perform the logging function of such redwood logs, the cost of logging shall be added to said price. Such costs of logging to be applied in determining said minimum price shall be the actual logging costs of respondent Simpson Redwood Company for the preceding calendar year, and shall be verified by reports of independent certified public accountants of recognized standing from the books and records of respondent Simpson Redwood Company.

6. In the event respondents have not divested the total amount of 500 million board feet during the 13-year period January 1, 1961, to December 31, 1973, this order shall remain in full force and effect until such date as total divestiture is completed or until December 31, 1980, whichever date is earlier, whereupon this order shall terminate; provided however that for any amount in excess of 100 million board feet which has not been sold and divested by December 31, 1973, the minimum prices shall be reduced to an amount equal to 80% of the minimum prices provided for in paragraph 5 of this section of this order.

7. In the event respondents, acting in accordance with the provisions of this order, have divested the total of 500 million board feet required to be divested prior to the expiration of 13 years from January 1, 1961, then, and in that event, this order shall terminate.

II

It is further ordered:

1. For the duration of this order respondents shall not acquire any interest whatsoever in redwood-type timberlands, old growth redwood cutting rights or old growth redwood logs containing a combined total of more than 100 million board feet of old growth redwood during the

period of this order, and in the event respondents purchase redwood-type timberlands, old growth redwood cutting right or old growth redwood logs containing in excess of 50 million board feet of old growth redwood during the period of this order, respondents shall divest themselves of an amount of old growth redwood timber and/or logs equal to the amount by which such purchases exceed 50 million board feet in accordance with the terms of this order.

In determining whether timberlands are redwood-type, such determination shall be made on the basis of forty (40) acre parcels.

2. For a period of 10 years from January 1, 1961, respondents shall not acquire any interest whatsoever in any old growth redwood sawmill; nor in any plant or company producing more than 10% old growth redwood plywood; nor in any plant or company producing more than 10% redwood pipes and tanks.

3. During the effective period of this order respondents' ownership of redwood-type timberlands shall not exceed 202,000 acres.

4. Nothing contained in this order shall apply to purchases by respondents of redwood timber or logs from lands owned or controlled by the United States Forest Service, Bureau of Indian Affairs, Bureau of Land Management, or the State of California.

5. In the event respondents make trades with purchasers, as purchasers are defined herein, of any of their old growth redwood timber or redwood-type timberlands for other timber or timberlands, including old growth redwood timber and redwood-type timberlands, the net balance of old growth redwood and/or redwood-type timberlands disposed of or obtained shall be subject to all of the terms and conditions of this order with such net balance being credited as either a divestiture or acquisition.

6. In the event of an act of God or major catastrophe, including but not limited to, fire, insect infestation or disease, which the respondents allege results in a substantial change of conditions in reference to their redwood timber holdings, the Commission shall, upon respondents' petition and affidavit, reopen the proceeding for reception of evidence as to whether the changed conditions require an alteration or modification of this order.

III

It is further ordered, That by such divestitures none of the redwood timber and/or logs required to be divested by this order shall be sold or transferred, directly or indirectly, to anyone who at the time of the divestiture is a stockholder, officer, director, employee, or agent of, or otherwise directly or indirectly connected with or under the

control of, respondents or any of their subsidiaries or affiliated companies.

DEFINITIONS

1. "Purchasers" as referred to herein, shall include any person, partnership or firm engaging in the ownership or cutting of old growth redwood logs or timber or the production of redwood lumber therefrom, and shall exclude the following-named companies and their subsidiaries, affiliates, agents or representatives:

The Pacific Lumber Company
The Georgia Pacific Corporation
Union Lumber Company
Arcata Redwood Company
Willits Redwood Products Company.

2. "Old growth" redwood timber means timber which is described interchangeably as "old growth" or "virgin" timber, as distinguished from what is commonly referred to as "young growth" or "second growth" timber. This includes redwood logs produced from felled redwood trees and timber cutting contracts as well as uncut redwood trees on the stump. "Old growth" redwood excludes "second growth" or "young growth" redwood timber which has grown on fully or partially cut-over lands subsequent to the logging of such lands and which is less than one hundred years of age.

3. "Cutting rights" or "cutting contracts" mean contracts for the purchase and sale of uncut redwood trees. Such contracts may or may not specify a third party, individual or firm who shall perform the logging, that is, the cutting and removal of the trees. They may or may not specify that the logging shall be done by the seller or purchaser.

4. "Redwood-type" timberlands means redwood timberlands, as defined by the U.S. Forest Service in Forest Survey Release No. 25, page 56, that is, forests in which 20% or more of the original stand is or was redwood.

5. "Board feet" means the unit of measure of volume of redwood timber and/or logs based on the Humboldt scale.

FINAL ORDER

By its order of October 31, 1961, the Commission extended until further order the date on which the initial decision of the hearing examiner herein would become the decision of the Commission; and

The Commission now having concluded that said initial decision is appropriate in all respects to dispose of this proceeding:

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It is ordered, That the initial decision of the hearing examiner filed September 22, 1961, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That respondents Simpson Timber Company, a corporation, and Simpson Redwood Company, a corporation, shall, on March 1, 1962, and at the expiration of each calendar year until